

CAPITAL PROJECTS ADVISORY REVIEW BOARD

504 15th Avenue

John L. O'Brien Building – Hearing Room D

Olympia, Washington

January 8, 2009

1:00 PM

Final Minutes

MEMBERS PRESENT

REPRESENTING

MEMBERS ABSENT

| | | | |
|-------------------------|---------------------------|------------------------|-----------------------------|
| Daniel Absher | General Contractors | Rep. Dan Kristiansen | House (R) |
| Vince Campanella | General Contractors | Senator Rodney Tom | Senate (D) |
| Damon Smith | Engineers | Senator Dale Brandland | Senate (R) |
| Rocky Sharp | Specialty Contractors | Norman Strong | Architects |
| Ed Kommers (Vice Chair) | Specialty Contractors | Vacant | Construction Trades Labor |
| David D. Johnson | Construction Trades Labor | John Lynch | General Administration (GA) |
| Cynthia Cooper | OMWBE | Vacant | Public Hospital Districts |
| John Ahlers | Private Industry | Dan Vaught | School Districts |
| Christopher Hirst | Private Industry | | |
| Olivia Yang | Higher Education | | |
| Larry Byers | Insurance/Surety Industry | | |
| Rodney Eng | Cities | | |
| Gary Rowe | Counties | | |
| Robert Maruska (Chair) | Ports | | |
| Rep. Kathy Haigh | House (D) | | |

STAFF & GUESTS

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|--|-----------------------------|
| Nancy Deakins, GA | Van Collins, AGC |
| Searetha Kelly, GA | Aran Buchan, ABC |
| Cheri Lindgren, Puget Sound Meeting Services | Joe Barnett, King County |
| Dick Lutz, Centennial Contractors | Larry Stevens, MCA/NECA |
| Mark Riker, Sheet Metal Workers Local 66 | Bob Dyer, WSDOT |
| Miriam Israel Moses, Rebound | Dan Galvin, AGO |
| Rick Slunaker, AGC | Mark Wheeler |
| Marsha Reilly, State Government & Tribal Affairs Committee | Tony Benjamin, Urban League |
| Jeanne Rynne, OSPI | Cos Roberts, Tabor 100 |
| | Mike Purdy, UW |

Welcome & Introductions

Chair Robert Maruska called the Capital Projects Advisory Review Board (CPARB) meeting to order at 1:07 p.m. Everyone present provided self-introductions. A meeting quorum was attained.

Approve Agenda

Vince Campanella moved, seconded by Dave Johnson, to approve the agenda as presented. Motion carried.

Approve December 11, 2008 Meeting Minutes

Rodney Eng moved, seconded by Daniel Absher, to approve the December 11, 2008 meeting minutes.

The following changes and/or clarifications were requested to the minutes of December 11, 2008:

- Delete Gary Rowe from the *Staff & Guests* section on page 1.
- Revise the fourth sentence within the seventh paragraph on page 5 to read, "When a project has been accepted and retainage released, L&I will not file a claim and will refer the employee to a private action."
- Clarify the motion in the middle of page 13 to state, "Christopher Hirst moved, seconded by John Lynch, to approve the language of the proposed legislation changing "full" to "dollar" within line 10."

Mr. Ahlers arrived.

Motion carried as amended.

Public Comments

There were no public comments.

Joint Administrative Rules Review Report

Mr. Eng briefed the Board on the Joint Administrative Rules Review Committee (JARRC) work session held earlier in the day. A quorum was not present; however, the JARRC did conduct an evidentiary hearing. The committee asked about the University of Washington (UW) contracting method for the Husky Stadium renovations. JARRC members received information on Alternative Public Works (APW) procedures. Kathryn Leathers, House counsel to JARRC, provided an excellent, accurate, and detailed presentation on APW statutes. The Attorney General issued an informal opinion indicating the UW has the authority under the statute to utilize the alternative contracting method and that the UW is not required to seek approval from the CPARB. Ms. Leathers advised the JARRC on how it might pursue whether or not the UW has the authority to use the alternative contracting method. The committee misunderstood CPARB's role and APW methodologies. The JARRC did not develop findings, continued the matter, and may convene an executive session to develop findings.

Review Draft Legislation

Marsha Reilly, State Government & Tribal Affairs Committee, distributed copies of draft legislation proposals and a summary sheet. She reviewed the changes contained in the proposed bills:

Ms. Cooper arrived.

- **Alternative Public Works Bill.** Requires the Board to develop guidelines for review and approval of Design Build (DB) demonstration projects that include operations and maintenance services. Allows for 10 DB projects with a total cost between \$2 and \$10 million. Allows for two DB projects that include procurement of operations and maintenance services for a period longer than three years. Clarifies that public bodies seeking certification for the DB procedure must demonstrate successful management of at least one DB project within the previous five years, and those seeking certification for the General Contractor Construction Manager (GC/CM) process must demonstrate successful management of at least one GC/CM project within the previous five years. Allows honorarium payments to GC/CM finalists submitting "responsive" proposals rather than "best and final." Requires public bid openings for GC/CM and opens scores for public review. Allows GA, UW, and Washington State University (WSU) to issue job order contracts for the state regional universities and The Evergreen State College (TESC).

It was noted the APW bill is a summary of last year's bill. The last two items are new.

- **Increasing Small Works Roster Project Dollar Limits.** The small works roster dollar limits are increased from \$200,000 to \$300,000, and the requirement to notify contractors on the roster of quotations being sought when the estimated cost is \$100,000 or more is changed to \$150,000 or more. The same change has been proposed for ports as reflected on page 5 of the draft legislation.
- **Payment of Undisputed Claims.** The bill requires public owners to issue a change order to a contract for the full amount of work not in dispute within 30 days of satisfactory completion of the work by the contractor. After 30 days, interest at the rate of 1% per month will accrue on the dollar amount not in dispute.

Members discussed the Board's prior action to change "full" to "dollar" within the ninth line of the *payment of undisputed claims* bill, and the distinction between "full" and "dollar."

- **Public Works Bid Limits.** Increases day labor limits as follows:
 - Higher education: From \$55,000 to \$90,000 for multiple trades; \$35,000 to \$45,000 for one trade.
 - First class cities: From \$70,000 to \$90,000 for multiple trades; from \$35,000 to \$45,000 for one trade (removed population requirement of 150,000 or more).
 - Second class and code cities: From \$45,000 to \$60,000 for multiple trades; from \$30,000 to \$40,000 for one trade.
 - Counties with population of 1 million or more: From \$70,000 to \$90,000 for multiple trades; from \$25,000 to \$45,000 for one trade.
 - All other counties: From \$10,000 to \$40,000 regardless of trades involved.

Chair Maruska asked if Ashley Probart has reviewed the completed *public works bid limits* draft bill. Ms. Reilly said she's unsure.

Discussion ensued on a strategy to move draft legislation through the Legislature and action required by the CPARB. Ms. Reilly said the fact that the Board has companion bills is beneficial. She suggested contacting Representative Hunt and Senator Farley to hold hearings on the bills. Representative Haigh is working to identify a senate sponsor. Chair Maruska said the action items concern is whether to draft a letter stating the bills are supported by the CPARB and forwarding the letter to key legislators.

Concerning the Board's prior action to change "full" to "dollar" in the *payment of undisputed claims* proposal, Ms. Reilly indicated she could submit a correction. After the sponsor sheets (blue and pink) are signed, a declaration can be added stating the legislation has the support of the CPARB. The endorsement will then appear on the face of the bill(s).

Representative Haigh arrived.

Ed Kommers moved, seconded by Daniel Absher, to change "full" to dollar" within the ninth line of the *payment of undisputed claims* bill, and to accept the package of bills and forward them in accordance with Ms. Reilly's instructions, including endorsement by the CPARB. Motion carried.

Representative Haigh shared information on lessons learned from the 2008 session. It would be helpful if the Board assigns one or two members to attend and advocate for the bills at the House hearing. Members could also contact committee members to let them know how important the bills are. She said she'll assist in pursuing the Senate version. Senator Karen Fraser chairs the Capital Budget Committee. It's important to identify a senator who can champion the legislation through the Senate, which would have solved the problem last year. Representative Haigh said she'll help CPARB members contact Senators Rodney Tom and Dale Brandland, who are also members of the Board. One option is scheduling appointments with both Senators next week.

Chair Maruska and Representative Haigh encouraged members to support the bills and follow up activities including monitoring the proposals, providing ongoing reports, and identifying next steps as necessary.

Task Force Reports/Proposed Legislation

Labor – Fair Competition for Washington Contractors, and Expand Subcontractor Bid Listing - Dave Johnson

Mr. Johnson reported both task forces met earlier in the day. Specific to the *subcontractor bid listing*, task force members are reviewing and working through draft legislation. Stakeholders agreed to prevent unfair bid shopping practices with further review and clarification of the language. Stakeholders were asked to provide input by Tuesday, January 13, 2009. Comments will be forwarded to Ms. Reilly for changes to the bid shopping bill. Task force members reviewed draft bill language for *fair competition for Washington contractors*. Some changes were suggested. A goal is for each task force to meet prior to the Board's February 12, 2009 meeting and develop new bills for review.

Ms. Reilly said the cut-off to hear bills in the house of origin is February 20, 2009, which is sooner than previous legislative sessions. Bills should be dropped at least 10 days prior to the cut-off.

Discussion ensued on the future of the proposal to *expand subcontractor bid listing* if a consensus is not attained. Mr. Johnson commented that he's unsure as three of the four bills presented earlier in the day represented consensus votes and one majority vote. The issue is whether a \$1 million threshold is appropriate today and whether to include more crafts in the first tier.

Mr. Kommers asked whether the Board can continue to debate and offer amendments to labor's proposed bills should the organization decide to drop bills. Mr. Johnson said he would think so.

Representative Haigh suggested dropping a bill now that could be changed or modified at a future date.

Mr. Absher appreciated Representative Haigh's comments and clarified that he prefers no bill proposal. The CPARB has not typically voted on labor proposals.

Owners – UW Husky Stadium Method – Olivia Yang

Members were referred to a task force report and directed to item 2 on the draft conclusion of the task force. The task force will meet to finalize a report for submittal to the Legislature in February.

Chair Maruska asked if the draft report will be available for the Board's February 12, 2009 meeting and subsequent action. Ms. Yang said that is the expectation. Members asked Ms. Yang to provide the Board with a summary of the report at the February meeting.

Subcontractors – Include Housing Authorities in APW, and Modify Definition of “Modular” in DB - Ed Kommers

Mr. Kommers reported the housing authority is not interested in meeting at this time and does not support including housing authorities in the definition of public bodies. Supplemental information will be forthcoming based on a pending Attorney General legal opinion.

The virtual task force assigned to explore and prepare language to *modify definition of “modular” in DB* does not have a bill proposal for the Board at this time. It’s possible draft legislation could be ready for the CPARB’s action at its February meeting.

Chair Maruska reviewed Open Public Meetings Act (OPMA) rules governing “virtual” meetings.

Contractors – Refine Notice Provisions (MMJ), Pay Undisputed Claims Promptly, and GC/CM Sub-bid Packages/Collective Bargaining - Daniel Absher

Mr. Absher reported the *pay undisputed claims promptly* issue was approved by the Board. There is no proposal at this time for the *refine notice provisions* issue.

The work group agreed to meet in the spring to discuss impacts on the *GC/CM sub-bid packages/collective bargaining* issue.

Owners – Negotiate with Low Bidder on Lump Sum Bids – Olivia Yang

Ms. Reilly distributed copies of a draft bill for expanding the ability to negotiate an adjustment to a bid price on public works to municipalities. Ms. Yang said the Board previously approved expanding the contracting authority to include municipalities.

Mr. Kommers said the bill represents the concept the Board approved; however, subcontractors and labor are opposed.

Mr. Eng asked if “municipality” includes counties and other public bodies. Mr. Hirst responded that “municipalities” is a broad term under 39.04. Mr. Eng said he understood the concept is to extend contracting authority to all public bodies. Mr. Hirst said a majority of Boardmembers voted to add “municipalities” to 39.04.015 and not change the definition of municipality.

Ms. Reilly reviewed the definition for “municipality” under 39.04.

Chair Maruska suggested amending and/or including the draft bill with the package approved by the Board with the Board’s endorsement.

Mr. Ahlers suggested the importance of distinguishing which bills received unanimous endorsement by the CPARB. There are members and/or their respective constituents who might not support a particular bill. Ms. Reilly said she’ll check with the code reviser on whether it’s best to note on the front page of a bill whether there was a unanimous or majority vote. It might be better for a Boardmember to clarify that point when testifying on a specific bill.

Discussion ensued on whether a member can speak against CPARB sponsored legislation supported by a majority of the Board.

Members offered feedback on the issue:

- It's not necessary to note whether a bill received unanimous or majority support by the CPARB. A member cannot speak on behalf of the CPARB and testify in opposition of a Board sponsored bill. However, a member can testify and voice opposition as a citizen of the state.
- It appears there are differing opinions and clarification is necessary.
- A member cannot concede its organization's position on a matter. Even if the CPARB endorses a bill, a member could be directed by its organization to speak in opposition.
- Even if a majority of the CPARB supports legislation, members cannot have their ability removed of speaking on behalf of their respective constituents.

Chair Maruska clarified that the bills will include endorsement by the CPARB and will not reflect whether there was a unanimous or majority vote. The Board's purpose and responsibility to the Legislature doesn't eliminate a member's ability to represent their constituents' interests.

Ms. Deakins acknowledged members should be able to represent their respective organizations when testifying. However, it might be confusing for legislators to see members testifying against CPARB sponsored legislation. She suggested another representative of the organization could present an alternative position to the Legislature.

Mr. Hirst added that it does not make sense for members to be excluded from representing their constituencies.

Representative Haigh said it's also important for legislators to understand concerns and the legitimacy of those concerns.

Mr. Absher suggested conducting a review of the Board's minutes from approximately three years ago when a Governor's representative reviewed expectations of members appointed to boards, commissions, and committees.

Daniel Absher moved, seconded by Christopher Hirst, to add the bill - to expand the ability to negotiate an adjustment to a bid price on public works to municipalities – to the package of legislation with the same endorsement as the other bills approved by the Board.

Mr. Ahlers said it's unclear whether there is an advantage, such as a better chance of proposed legislation passing, if legislators believe the Board unanimously endorses a specific bill. Representative Haigh said including a statement in the bill language indicating unanimous support by the CPARB would be helpful for moving the bill forward. She explained the difference between advising and/or testifying and active lobbying.

Daniel Absher moved, seconded by Olivia Yang, to amend the motion and add a unanimous endorsement to the bills unanimously approved by the Board. The amendment to the motion carried.

The motion as amended carried.

Chair Maruska asked GA staff to research Board minutes and follow up with a report.

Ms. Deakins asked about the status of *repeal out of date prompt pay retainage statutes* issue. Ms. Yang said she forwarded draft language to GA staff several months ago.

Chair Maruska reported on September 11, 2008, the Board approved repealing portions Revised Code of Washington (RCW) Chapters 39.76 and 60.28 on public works contracts entered into prior to September 1, 1992.

Ms. Reilly said she didn't recall reviewing the draft proposal.

Mike Purdy, UW, advised that he prepared clarifying draft language. The subject is a clean-up issue. He said he'll forward text to Ms. Reilly for bill drafting purposes.

Discussion followed on how to proceed based on upcoming house and senate deadlines.

Daniel Absher moved, seconded by Rodney Eng, to add the *repeal out of date prompt pay retainage statutes* bill to the package of five bills the Board approved with the understanding that the language is the same as what the Board approved last September with a unanimous endorsement. Motion carried.

Representative Haigh offered to sponsor the two larger bills. Ms. Deakins noted there are three other legislators on the Board that could sponsor the smaller bills.

Review Task Force Assignments/Set Next Meeting Agenda

- UW Husky Stadium method task force report
- Standing agenda items including a report from the Project Review Committee (PRC)
- Review potential draft legislation on fair competition for Washington contractors, expand subcontractor bid listing, and modify definition of "modular" in DB
- A presentation from Daniel Absher on behalf of general contractors on issues and concerns related to responsibility criteria (owners to respond at a future meeting with follow-up discussion after the 2009 legislative session; it was also noted that *finish responsibility guidelines* is on the "clean up and other issues" list)
- A status report on data collection following session

Other Business

Mr. Kommers reported Associated General Contractors (AGC) Education Foundation and UW are hosting GC/CM training on January 29 and 30, 2009 in Seattle. Additional information is available on AGC's website.

Ms. Kelly advised that the February CPARB meeting will be held at Office Building 2 in Conference Room SL-03.

Ms. Deakins reported that one of Governor Gregoire's action items is consolidation of boards, commissions, and committees. She advised that it's likely the CPARB will need to justify remaining intact. She said she'll solicit some ideas from members through e-mail.

Chair Maruska indicated the Board could respond to a request from the Director of GA. Ms. Deakins advised that she'll follow up with the Director on the feasibility of obtaining feedback from members electronically.

Mr. Eng offered that information contained in the Joint Legislative Audit and Review Commission (JLARC) report might be valuable to the Governor as well.

Ms. Deakins said another consideration is the substantial cost associated with monthly Board meetings. Another possibility is scheduling quarterly rather than monthly meetings to reduce costs.

Adjournment

With there being no further business, Chair Maruska adjourned the meeting at 3:12 p.m.

Robert Maruska, CPARB Chair

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services